

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

This matter is before the court on April Nicole Garrett's ("Garrett") motion to vacate, set aside, or correct her sentence pursuant to 28 U.S.C. § 2255. On May 19, 2008, Garrett was found guilty after a jury trial of one count of knowingly and with the intent to defraud using unauthorized access devices to obtain money, goods and services of a value totaling more than \$1,000; two counts of knowingly using the social security number of another person to obtain a credit card; and one count of knowingly using and making a false document containing false, fictitious, and fraudulent material statements by submitting a forged official mail forwarding change of address order to the United States Postal Service for the purpose of receiving the mail of another person. Garrett was sentenced on September 10, 2008, to eighty-one (81) months' imprisonment.

On September 16, 2008, Garrett appealed her conviction and sentence. The instant motion was filed on October 6, 2008.¹ Because her direct appeal is still pending, the court lacks jurisdiction to consider Garrett's § 2255 motion. Griggs v. Provident Consumer Disc. Co., 459 U.S. 56, 58 (1982) (finding that filing a notice of appeal "confers jurisdiction on the court of

¹ Houston v. Lack, 487 U.S. 266, 272 (1988)

appeals and divests the district court of its control over those aspects of the case involved in the appeal"), superseded on other grounds by, Fed. R. App. P. 4(a)(4). As such, Garrett's collateral attack of her conviction and sentence under 28 U.S.C. § 2255 is premature. See Pratt v. United States, 129 F.3d 54, 60-61 (1st Cir. 1997). Therefore, after a thorough review of the facts and pertinent law, the court dismisses Garrett's § 2255 motion.

Therefore, it is

ORDERED that Garrett's § 2255 motion is dismissed without prejudice.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
United States District Judge

Greenville, South Carolina
October 14, 2008

NOTICE OF RIGHT TO APPEAL

The movant is hereby notified that he has the right to appeal this order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.